Maryland Law Review

Volume 27 | Issue 3 Article 10

Book Review

Book Review

Legal Restraints On Racial Discrimination In Employment. By Michael I. Sovern. The Twentieth Century Fund, New York: 1966. Pp. 270. $6.00.

"Underlying this whole work," Professor Sovern states, "is the premise that the law can and should be invoked against racial discrimination in employment" (p. 7). Certainly this is a reasonable stance and one to which all men of good will should subscribe. Professor Sovern then attempts to buttress his premise by means of historical and legal analysis of restraints against discrimination in employment.

Understandably, the heart of Professor Sovern's analysis is Title VII of the recently enacted Civil Rights Bill of 1964. Wisely insisting, however, that Title VII cannot be understood except in the light of prior state and federal activity in this field (for, as I have indicated, both historical and legal reasons), Professor Sovern devotes several chapters to an examination of Fair Employment Practices (FEP) by executive order and state activity in the field.

Unfortunately, his treatment of state activity in the field is limited to a study of the New York Commission for Human Rights. And although there are no doubt flaws in the New York Commission's make-up, I would like to suggest that a more comprehensive approach might yield a healthy sense of frustration, making criticism both more likely and more fruitful.[1] Let me make myself clear. I am not suggesting that Professor Sovern is unaware of the problems which beset state agencies. He lists a variety of commission ills (including inadequate budgets, commission timidity, protracted conciliation efforts, and soft settlements), which clearly demonstrate his grasp of the unfortunate situation that exists in FEP states.

What I would like to suggest is that his choice of New York as a focal point for analysis seriously understates the problem as it exists today. For example, in Table I, I have listed the budgets and per capita expenditures (non-white population) of a number of Northern industrial states. These figures, I believe, illustrate the general inadequacy of state expenditures in this field (it should be remembered that these state agencies deal with other kinds of cases, for example, housing, in addition to employment discrimination) and, in addition, the limited state response to Title VII.

---

1. *See* Hill, *Twenty Years of State Fair Employment Practices: A Critical Analysis with Recommendations,* 14 BUFFALO L. REV. 22 (1964) for such an approach.

TABLE I*

COMPARATIVE STATE CIVIL RIGHTS AGENCY BUDGETS

State	Budget in $1,000			Per Capita Expenditures 1966-67 Non-White Population**
	1964-65	1965-66	1966-67	
California	585	650	680	.54
Connecticut	121	137	190	1.71
Illinois	75	99	99	.09
Indiana	60	66	66	.24
Massachusetts	146	170	N.A.	....
Michigan	391	635	943	1.28
New Jersey	184	250	298	.56
New York	1700	1900	2000	1.34
Ohio	205	212	246	.31
Pennsylvania	656	636	836	.97

* Source: Research Division, Ohio Civil Rights Commission.
** Per capita expenditures based on 1960 population data.

Perhaps Professor Sovern only wished to spare us the unpleasant details, however, for he ends this chapter with a series of recommendations which give further indication of his awareness of this problem.

Professor Sovern's treatment of FEP by executive order is perhaps the best section of the book. Relegating the clearly inadequate attempts of the Truman and Eisenhower administrations to an appendix, he devotes the entire chapter to the Kennedy and Johnson efforts in this field. While a more critical approach might have yielded unexpected benefits, the analysis here is more than adequate.

Professor Sovern's treatment of Title VII is all we could hope for under the circumstances. Written during the early days of the Act's existence, the analysis is both detailed and accurate. He runs through Title VII in good order, explaining in clear, uncluttered language what it is about, what it will do, and what may reasonably be expected of it. He rightly emphasizes the weakness of reliance upon conciliation (as state experience has shown), but neglects, unfortunately, to give us any analysis of the Equal Employment Opportunities Commission's ability to meet the needs of Negroes in the most basic sense of adequate staff or budget.[2] His analysis here is more legal than historical, which is perhaps the major shortcoming of this chapter.

Professor Sovern's awareness of the shortcomings of Title VII leads him to a study of the role of the National Labor Relations Board. After delineating the concept of fair representation which underlies Board activity in this field, he discusses the role which the Board may play in FEP and those sanctions which the Board has at its disposal.

2. Apparently the Commission faces serious problems in this area, for they were equipped to handle only 2000 cases during the first year of operation. The fact that they received over 8600 complaints indicates that, in the future, backlogs may prove to be a serious problem. *See EEOC Reviews First Year of Operation,* CCH TOPICAL LAW REPORTS — EMPLOYMENT PRACTICES 6120 (7/11/66).

Finally, Professor Sovern devotes a chapter to a New York Commission apprenticeship case. His historical treatment of the case is coupled with hypothetical appeals to the Equal Employment Opportunities Commission, the Secretary of Labor, and the National Labor Relations Board. He ends this chapter with an all-too-brief conclusion dealing with the general problems confronting Negroes when they attempt to enter the skilled trades.

My major quarrel with Professor Sovern is his heavy reliance on legal mechanisms to combat discrimination in employment to the exclusion of methods of self-help. He states (pp. 210–11) that:

> In recent years aroused Negro groups have sometimes made their own opportunities by engaging in consumer boycotts terminable only by the target's hiring of a specified number of Negroes. Other groups have sought jobs through demonstrations, usually less focused than the boycotts but aimed generally at dramatizing the Negro's situation and inducing government officials to do something.
>
> One suspects that the energies spent on a large proportion of these demonstrations would have been better devoted to exploiting one or another of the legal remedies we have been discussing, but the streets will remain a major forum for racial controversies throughout the foreseeable future. When demonstrations seek what the law would give, ignorance or impatience, frequently both, are at work. Sensible information programs and more effective administrative action can make major inroads on these.

My own position on this subject is at almost complete variance with this. At the heart of the disagreement is the statement quoted above that "When demonstrations seek what the law would give, ignorance or impatience, frequently both, are at work." For Mr. Sovern to call the Negro demonstrator impatient, even though this puts him in a category with some 85% of white Americans who think that the Negro civil rights movement is moving "too fast,"[3] seems to me to display a serious lack of historical perspective. But my quarrel is not so much with that as with the implicit assumption that the law *can* give relief in all of these cases. As I have indicated, I am in agreement with the premise underlying Professor Sovern's work — that the law can and should be involved. But I do not believe that the law is capable, at this time, of solving all the numerous and complex problems which are present in this field. State FEP laws, according to Herbert Hill, are a failure.[4] Title VII, with its heavy reliance upon them (coupled with its own major shortcomings, both legal and fiscal), seems clearly inadequate to significantly alleviate these problems. Other federal

---

3. W. BRINK & L. HARRIS, BLACK AND WHITE 120 (1967).

4. Hill, *supra* note 1, at 23. According to Ray Marshall, it is significant that the racial demonstrations in Northern cities during 1963 and 1964 were in states and municipalities with the most active FEP commissions. R. MARSHALL, THE NEGRO WORKER 130 (1967).

attempts are equally handicapped. The Negro is faced, in many situations, with the choice of using self-help or of bowing to discrimination.

As I have indicated, Professor Sovern greatly undervalues the current usefulness of direct action in the achievement of equal employment opportunity goals. However, in discussing the beginnings of federal action in restraints on discrimination, Professor Sovern states on Page 9 that:

> It was not the hopes of minorities that brought relief, nor even the horrors of racism elsewhere in the world, although the President was surely moved by them. The disquieting reality is that President Roosevelt was embarrassed into acting by the threat of a demonstration march on Washington. Scheduled for July 1, 1941, the march seemed likely to attract 100,000 Negroes to the capital to protest against the substantial exclusion of Negroes from employment in government and defense industries. The Administration exerted itself to have the march called off. Letters were written and conferences were held, but without the President's firm commitment to use his powers to obtain equal employment opportunity, the Negro leaders held fast. Finally, on June 23, the President capitulated and promulgated Executive Order 8802, prohibiting racial discrimination in government and defense industries.

As I indicated earlier, Professor Sovern's analysis of the Civil Rights Act of 1964 is primarily legal. Perhaps if he had engaged in more historical analysis, he could have found some relationship between the so-called civil rights revolution of 1960-64 (including the 1963 march on Washington) and the passage of that bill. I should think that the obvious lesson to be gained from this is that direct action has proven to be of vital importance to the progress of the Negro.[5] Undoubtedly the time will come when this particular kind of action will no longer be called for. That time is not yet here. So long as Negroes must depend upon under-financed, under-staffed state and federal agencies for the preservation of their rights, so long will self-help remain a very important part of any successful campaign. For Professor Sovern to ignore this reality, while perhaps understandable, is unforgivable. It is a defect which seriously mitigates what value the book might otherwise have.

*Harry R. Blaine**

---

5. Professor Sovern's apparent distaste for demonstrations should not blind us to the fact that demonstrations, including riots, are a form of political action. Although no government can recognize mass violence as a legitimate form of protest, many Negroes feel that they are forced to violence by a denial to them, because of their race, of more acceptable means of protest. And even though both the strategy and tactics of mass violence may be open to serious question, it can hardly be denied that this type of action affords a dramatic confrontation between Negro aspirations and the white power structure.

* Assistant Professor, The Labor Education and Research Service, The Ohio State University. B.A., 1958, The Ohio State University, LL.B., 1962, Yale University.